REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE Petitioner,	**CTA EB CASE NO. 997** **(CTA Case No. 8199)**
- *versus* -	Present: *Del Rosario, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla,* *Cotangco-Manalastas, and* *Ringpis-Liban, JJ.*
BRAVO ALABANG, INC., Respondent.	**Promulgated:** SEP 30 2014 11:30 am

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by petitioner Commissioner of Internal Revenue ("CIR"), on April 11, 2013, pursuant to Section 18 of Republic Act ("RA") No. 1125, as amended by RA No. 9282, and RA No. 9503, praying to set aside the Decision[2] promulgated by the Second Division of the Court ("Court in Division") on November 29, 2012, and Resolution dated March 12, 2013,[3] and accordingly, for respondent, Bravo Alabang, Inc. ("Bravo") to pay the

[1] *Rollo*, CTA EB Case No. 997 (CTA Case No. 8199), pp. 4- 32, with Annexes.
[2] *Rollo*, CTA EB Case No. 997 (CTA Case No. 8199), pp. 14-25; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova, and Associate Justice Cielito N. Mindaro-Grulla, concurring.
[3] *Id.*, pp. 26-28.

amounts of Php49,347.79, Php214,781.63, and Php31,596.73 representing deficiency Income Tax, Value-Added Tax ("VAT"), and Expanded Withholding Tax, respectively, for taxable year 1999, plus 25% surcharge for late payment and 20% annual interest from November 11, 2010 until fully paid pursuant to Sections 248 and 249 of the National Internal Revenue Code ("NIRC") of 1997, as amended.

The Parties[4]

Petitioner is the duly appointed Commissioner ("CIR") of the Bureau of Internal Revenue, authorized to perform the duties of her Office, including, inter alia, the power to decide disputed assessments or other charges and penalties imposed in relation thereto, pursuant to the provisions of the National Internal Revenue Code (NIRC), as amended.

Respondent, Bravo Alabang, Inc. ("Bravo"), is a domestic corporation established and existing under the laws of the Republic of the Philippines, with mailing address at No. 156 Guava Drive, Ayala Alabang, Muntinlupa City.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision,[5] dated November 29, 2012.

> "The case sprung from the Formal Assessment Notice (FAN) dated January 21, 2003 issued by respondent (*now herein* "petitioner") against petitioner (*now herein* "respondent") for deficiency income tax, value-added tax, and expanded withholding tax assessments in the amounts of P1,826,777.81, P461,006.97, and P34,379.08, respectively, for taxable year 1999.
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> Thereafter, petitioner (*now herein* "respondent") filed a protest letter dated March 5, 2003, submitting that

[4] *Id.*, pp. 14-15.
[5] *Id.*, pp. 14-25.

> the deficiency income tax, value-added tax, and expanded withholding tax assessments for the year 1999 have no basis and must therefore be withdrawn and cancelled.
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> On November 11, 2010, petitioner (*now herein* "respondent") received a copy of the Final Decision on Disputed Assessment (FDDA) of respondent (*now herein* "petitioner"), informing it that after "reinvestigation", petitioner (*now herein* "respondent") is still liable to pay deficiency income tax, value-added tax, and expanded withholding tax for taxable year 1999 in the reduced amounts of P49,347.79, P214,781.63, and P31,596.73, respectively.
>
> Petitioner (*now herein* "respondent") then appealed the said Final Decision on Disputed Assessment via the instant Petition for Review filed on December 13, 2010.
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> On January 28, 2011, respondent (*now herein* "petitioner") filed her Answer and interposed the following special and affirmative defenses: xxx

On October 1, 2012, a Resolution was issued by this Court submitting the case for Decision, considering the Report dated September 24, 2012 of the Records Division that no memorandum has been filed by both parties.

The Ruling of the Court in Division

On November 29, 2012, the Court in Division promulgated a Decision[6] granting Bravo's Petition for Review by ruling that:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Assessment Notice dated January 21, 2003 for deficiency income tax, value-added tax, and expanded withholding tax assessments for taxable year 1999 is hereby **CANCELLED**.
>
> **SO ORDERED**."[7]

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[6] *Id.*, pp.14-25.
[7] *Id.*, p. 24.

On December 19, 2012, the CIR filed her Motion for Reconsideration by registered mail.

On March 12, 2013, the Court in Division issued a Resolution[8] denying the CIR's claim, the dispositive portion is as follows:

> "**WHEREFORE**, respondent's Motion for Reconsideration filed through registered mail on December 19, 2012 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."[9]

Not satisfied with the Resolution, CIR filed the instant Petition for Review with the Court *En Banc* on April 11, 2013.

On November 6, 2013, the case was submitted for decision considering both parties failed to submit their respective memorandum

Hence, this Decision

The Issues

In the present Petition for Review, CIR proffers the following issues:

> 1. Whether or not the right of herein petitioner to collect the subject deficiency tax assessments has already prescribed;
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> 2. Whether or not petitioner actually granted the request for reinvestigation and the respondent was made aware of the action taken on its request; hence, it effectively suspended the running of the prescriptive period for the collection of taxes;
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> 3. Whether or not submission of documentary evidences are still required even if there is already a

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[8] *Id.*, pp. 26-28.
[9] *Id.*, p. 28.

judicial admission of the respondent's witness as to the granting of its request for reinvestigation and the action taken thereon by petitioner.

The CIR's Arguments

CIR alleges that with the testimony of respondent's own witness, it made it clear that the motion filed by respondent was one for a reinvestigation and not a reconsideration, which in effect tolled the running of the prescriptive period prescribed by law. Therefore the period to collect the subject deficiency taxes has not prescribed.[10]

In addition, CIR states that respondent is estopped from questioning that the right to collect is already time barred, and that respondent was aware of the reinvestigation and the action taken by petitioner through the issuance of the Final Decision on Disputed Assessment ("FDDA").[11] Also the fact that the testimony of respondent's witness is a judicial admission, it requires no documentary evidence.[12]

The Ruling of the Court En Banc

The Court *En Banc* finds the Petition for Review bereft of merit.

In the Decision[13] dated November 29, 2012, the Court in Division unanimously ruled that:

> "To address respondent's arguments, a plain reading of the earlier cited provisions would show that the prescriptive period provided by law to make a collection is interrupted only when a taxpayer requests for reinvestigation of the assessment and the same is granted by the Commissioner.

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[10] *Id.*, p. 9.
[11] *Id.*, p. 9.
[12] *Id.*, p. 9.
[13] *Id.*, pp. 14-25.

A mere request for "reinvestigation" without the corresponding action on the part of the Commissioner does not interrupt the running of the prescriptive period. The request should first be granted in order to effect suspension.

In the case of *Republic of the Philippines vs. Felix B. Acebedo*, the High Court likewise stressed that the running of the statute of limitations shall not be suspended or interrupted unless the taxpayer's request for reinvestigation is acted upon by the Commissioner.

In the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, the High Court declared that the burden of proof that the request for reinvestigation had been actually granted shall be on the respondent. Such grant may be expressed in the communications with the taxpayer or implied from the action of the BIR Commissioner or her authorized representative in response to the request for reinvestigation.

In this case, there is nothing in the evidence presented which would show that by the acts of petitioner, respondent was convinced to postpone the collection of the tax due to reinvestigation or that petitioner was made aware of the action taken on its request. **In fact, what only appears from the evidence admitted before the Court is that the protest filed by petitioner is a mere request for reconsideration of the Formal Assessment Notice and that respondent issued the Final Decision on Disputed Assessment only on November 3, 2010, which was received by petitioner on November 11, 2010. Accordingly, the running of the prescriptive period for collection was never interrupted or suspended**.

Notably, the delay in collection could not be attributed to petitioner at all until November 11, 2010, that is when respondent issued the appealed Final Decision on Disputed Assessment. In fact, petitioner's request appeared to have been unacted until then, despite absence of any legal means which might impede enforcement of the tax liability. More than seven years had lapsed since the assessment in question was made.

> Thus, prescription had already set in, making subsequent events in connection with the said assessment, such as the issuance of the Final Decision on Disputed Assessment, entirely moot.
>
> xxx xxx xxx
>
> In this case, respondent or her duly authorized representatives inordinately delayed acting on petitioner's request for reconsideration and took no effort to collect the deficiency income tax from petitioner when there was nothing that prevented them from doing so. When the Formal Assessment Notice dated January 21, 2003 for deficiency income tax, value-added tax, and expanded withholding tax assessments in the amounts of P1,826,777.81, P461,006.97, and P34,379.08, respectively, for taxable year 1999 was issued, respondent had five years within which to enforce collection as required by law. **However, it was only on November 3, 2010, or after the lapse of seven (7) years, that respondent rendered a decision denying the protest. Since the protest filed by petitioner failed to suspend the running of the period to collect the deficiency taxes assessed, the right of respondent to collect the same is deemed to have already prescribed.**"[14] (*Emphasis Supplied*)

The Court *En Banc* finds no reason to depart from the Court in Division's ruling.

As correctly ruled by the Court in Division, "a mere request for reinvestigation without the corresponding action on the part of respondent CIR (now herein "petitioner") does not interrupt the running of the prescriptive period. The request should first be granted in order to effect suspension."[15]

The burden of proof lies on petitioner CIR to show that the request for reinvestigation had been actually granted. Such grant may be expressed in petitioner's communications with the taxpayer or

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[14] *Id.*, pp. 21-24.
[15] *Id.*, Resolution dated March 12, 2013, citing Republic of the Philippines vs. Santiago Gancayco, G.R. No. L-18307, June 30, 1964; p. 27.

implied from her action or her authorized representative in response to the request for reinvestigation.[16]

Examples of actions which imply that the request for reinvestigation has been granted are enumerated in the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*,[17] to wit:

> "In *Querol v. Collector of Internal Revenue*, the BIR, after receiving the protest letters of taxpayer Querol, sent a tax examiner to San Fernando, Pampanga, to conduct the reinvestigation; as a result of which, the original assessment against taxpayer Querol was revised by permitting him to deduct reasonable depreciation. In another case, *Republic of the Philippines v. Lopez*, the taxpayer Lopez filed a total of four petitions for reconsideration and reinvestigation. The first petition was denied by the BIR. The second and third petitions were granted by the BIR and after each reinvestigation, the assessed amount was reduced. The fourth petition was again denied and, thereafter, the BIR filed a collection suit against taxpayer Lopez. When the taxpayers spouses Sison, in *Commissioner of Internal Revenue v. Sison*, contested the assessment against them and asked for a reinvestigation, the BIR ordered the reinvestigation resulting in the issuance of an amended assessment. Lastly, in *Republic of the Philippines v. Oquias*, the BIR granted taxpayer Oquias's request for reinvestigation and duly notified him of the date when such reinvestigation would be held; only, neither taxpayer Oquias nor his counsel appeared on the given date."

In the present case, however, there were no actions which could be interpreted as a grant by CIR of the request for reinvestigation. Thus, her first argument must fail.

Anent the second argument, petitioner CIR alleges that the testimony of the witness of respondent Bravo amounts to judicial admission and therefore conclusive upon the party making it. To quote:

[16] BPI vs. Commissioner of Internal Revenue, G.R. No. 174942, March 7, 2008, 548 SCRA 105.
[17] BPI vs. CIR, G.R. No. 139736, October 17, 2005, 503 SCRA 563.

> "...they conducted a review of the assessments and considered the documents we submitted in support of our protest."

The above-cited statement alone cannot be construed to mean that a reinvestigation was conducted or granted without any further proof. As found by the Court in Division, the protest[18] filed by respondent Bravo is a mere request for reconsideration of the Formal Assessment Notice.

Since the factual findings of the Court in Division are supported by substantial evidence on record, We find no reason to reverse the same.

In the case of *Rodolfo Naceda vs. Court of Appeals, et. al.,*[19] it has been held by the Supreme Court that factual findings of the Court when supported by substantial evidence on record are final and conclusive upon the parties and carry even more weight, to wit:

> "Factual findings of the Court of Appeals, supported by substantial evidence on record are final and conclusive on the parties and carry even more weight when the Court of Appeals affirms the factual findings of the trial court; for it is not the function of this Court to re-examine all over again the oral and documentary evidence submitted by the parties unless the findings of fact of the Court of Appeals are not supported by the evidence on record or the judgment is based on the misapprehension of facts. The jurisdiction of this court is thus limited to reviewing errors of law unless there is a showing that the findings complained of are totally devoid of support in the record or that they are so glaringly erroneous as to constitute serious abuse of discretion. We find no such showing in this case."

Therefore, the testimony alone of respondent Bravo's witness cannot justify that a motion for reinvestigation was filed, in view of the other pieces of evidence showing that it was a mere request for reconsideration.

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[18] *Rollo*, p. 22, citing Exhibit "A."
[19] G.R. No. 119730, September 2, 1999, 313 SCRA 504.

Anent the third argument, it is no longer necessary to discuss the same as the prescriptive period to collect never tolled given that there was no evidence to support that there was a reinvestigation or even one that was granted by the CIR. Therefore, the Court finds that the period to collect has already prescribed.

The Court *En Banc* finds no cogent reason to rule in the contrary from the Court in Division's Decision and Resolution dated November 29, 2012 and March 12, 2013, respectively.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision and Resolution dated November 29, 2012 and March 12, 2013, respectively, are hereby **AFFIRMED** in *toto.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice